Testimony of The Honorable Nancy L. Johnson

before the

U.S. Senate Committee on Indian Affairs

May 11, 2005

Mr. Chairman and members of the Committee, thank you for inviting me to testify today on the important subject of the Bureau of Indian Affairs' federal recognition process. This issue is of significant concern to my constituents in Connecticut's Fifth District.

Problems within the BIA process are well-known and have been documented by well-respected, independent agencies. In 2001, the U.S. General Accounting Office reported that the recognition process is characterized by inconsistency, unfairness, and delay. A subsequent report by the Interior Department Inspector General about the recognition process cites troubling irregularities, the use of political influence in what should be an objective process, and the questionable practice of recently-departed BIA officials lobbying for petitioning tribal groups.

Mr. Chairman, the BIA's tribal recognition process has failed the people of Connecticut, particularly its erroneous and unlawful decision to acknowledge the Schaghticoke Tribal Nation of Kent. Simply put, it was made by ignoring evidence, manipulating federal regulations and overturning precedent.

As the Committee knows, the Bureau of Indian Affairs is permitted to recognize a tribe only if it satisfies each of the "seven mandatory criteria" laid out in federal regulations, including the key criteria that the tribe demonstrates it has exercised political authority over a community throughout its history.

The reasons for these strict, mandatory criteria are manifest. The establishment of a federally recognized tribe has significant and irreversible effects. Federally recognized tribes are:

- Exempted from a broad range of state laws and regulations, including state and local taxation.
- Allowed to build Las Vegas-style casinos, placing unbearable burdens on municipalities, on local tax bases and taxpayers, and on an aging infrastructure that could not tolerate the volume of traffic such a facility would create.
- Allowed to pursue land claims in court, which can threaten local property rights, cloud title in widespread areas, and prevent property sales.

Mr. Chairman, the evidence convincingly shows that the Schaghticoke petition did not satisfy each of the seven mandatory criteria, and the BIA manipulated both the evidence and established acknowledgment standards to get the petition over the goal line. More particularly:

- The BIA ignored agency admissions that "insufficient direct evidence" or "little or no direct evidence" exists to satisfy the key political authority criterion for over a century.
- The BIA overturned longstanding agency precedent when it erroneously interpreted the relationship between the State of Connecticut and the Schaghticoke people;
- The BIA used unprecedented and inaccurate accounting methods to calculate tribal marriage rates, without which the STN would not have satisfied the criteria for political authority for a 74 year period.

We know this because the BIA told us so. In a now-infamous "briefing paper" prepared

by BIA staff two weeks before it granted recognition, a strategy was outlined for BIA officials to overturn existing agency precedent and ignore federal regulations in order to find in the Schaghticoke's favor. In the briefing paper, BIA staff informed their superiors that key evidence of political authority – evidence necessary to grant recognition – was "absent or insufficient for two substantial historical periods." Furthermore, the briefing paper freely admits that declining to acknowledge the Schaghticoke "maintains the current interpretations of the regulations and established precedents how continuous tribal existence is demonstrated." Faced with the evidence and the law that demanded a negative result, the BIA ignored the evidence and reinterpreted the law. This is not how the American people expect their government to operate.

Last December, the Interior Department's Office of the Solicitor advised the Interior Department that the BIA used an unprecedented methodology and made material mathematical errors is calculating tribal marriage rates. Without these mistakes, the Schaghticoke petition would not have satisfied key criteria and would not have been recognized. Even the Office of the Solicitor advises the Interior Board of Indian Appeals, where the case is now being heard, that the BIA's decision "should not be affirmed on these grounds absent explanation or new evidence."

The BIA's decision in the Schaghticoke case is currently being appealed to the Interior Board of Indian Appeals. Our experience to date gives me little confidence that the IBIA will set correct the BIA's decision. Last year I wrote to the IBIA on behalf of my constituents seeking information on what the IBIA has done and when it expects to render a decision. The Board refused to reply with this information.

Given the grave consequences of the BIA's unlawful actions, I recently introduced *The*

Schaghticoke Acknowledgment Repeal Act of 2005 in the U.S. House of Representatives. This bill overturns the BIA's erroneous and unlawful decision to grant federal recognition to the Schaghticoke. This legislation recognizes the fact Congress cannot allow the result of an unlawful federal recognition process to stand. I respectfully urge the Committee to review it and consider it as you move forward with your work.

This Committee is rightly examining the recognition process writ large. I wholeheartedly support this effort, and I support legislation introduced by my colleagues to make the process fair, objective and accountable to the public.

I also believe the recognition process must take into account the very different histories of descendants of Native Americans in the eastern United States and those from out west. Connecticut State Archaeologist Nicholas Bellantoni argued before a public forum in March that the "historical context" varies between tribal groups around the country. While contact between European settlers and Native Americans in the eastern states has been continuous since the landing at Plymouth rock, Professor Bellantoni noted that in the western states contact may have only come in the mid-19th century. For Connecticut, continuous contact between settlers and Native Americans began 175 years before there was even a United States. I believe the recognition process does not recognize the divergent history between east and west, instead imposing a one-size-fits-all standard on tribal groups.

But I would remind the Committee that prospective reforms to the recognition process will not fix the BIA's erroneous and unlawful decision in the Schaghticoke case, and it may not prevent the financial interests backing this petition from moving closer to their goal: a Las Vegas-style casino in an area of Connecticut that does not want one nor can support one.

Mr. Chairman, Members of the Committee, the BIA has failed the people of Connecticut and the United States. It respectfully urge this Committee not only to look toward reforming the BIA recognition process, but also correcting its past failures, as in the Schaghticoke case. The reasons for moving forward with strong reform are plentiful, the reasons for accepting the status quo are non-existent. I believe that the public's trust in good and responsible government requires action by this Committee and this Congress.

Thank you.